

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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In re application of: Rich BONTRAGER Group Art Unit: 2654
Serial No.: 09/709,809 Examiner: David D. Knepper
Filed: November 9, 2000 Confirmation No.: 4959

For: AUDIO SYNTHESIS OF A CURRENTLY TUNED FREQUENCY

Attorney Docket No.: 462-99-015-5542

SUBMISSION OF APPELLANT APPEAL BRIEF

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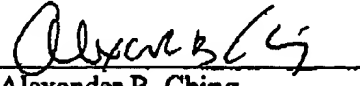
Sir:

Appellant hereby submits its Appeal Brief in response to the final rejection of the subject patent application.

The Commissioner is hereby authorized to charge Ingrassia, Fisher & Lorenz, Deposit Account No. 50-2091, \$500 for the filing of this Appeal Brief.

Respectfully submitted,

Dated June 20, 2005


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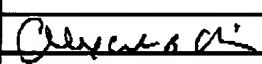
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	Filing Date	November 9, 2000	
	First Named Inventor	Rich BONTRAGER	
	Art Unit	2654	
	Examiner Name	D.D. Knepper	
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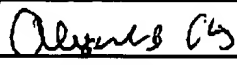
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Firm or Individual name	Alexander B. Ching, Reg. No. 41,869		
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Date	June 20, 2005		

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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In re application of: Bontrager, Rich

Group Art Unit: 2654

Serial No.: 09/709,809

Examiner: David D. Knepper

Filed: November 9, 2000

Confirmation No.: 4959

10

For: AUDIO SYNTHESIS OF A CURRENTLY TUNED FREQUENCY

Docket No.: 462-99-015-5542

Customer No.: 000128

15

APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

20

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

25

Sir:

This is an Appeal Brief under 37 C.F.R. § 41.37 appealing the final rejection of the
Examiner dated November 29, 2004. Each of the topics required by 37 C.F.R. § 41.37 is
presented in this Brief and is labeled appropriately.

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I. Real Party in Interest

Honeywell International, Inc. ("Honeywell") is the real party in interest of the present application. An assignment of all rights in the present application to Honeywell was executed by the inventor and recorded by the U.S. Patent and Trademark Office at reel 011767, frame 0207.

5

II. Related Appeals and Interferences

Appellant is not aware of any appeals or interferences related to the present application.

10

III. Status of Claims

Claims 11-16, 23-29, 31-32, 34-38, 40, and 42, which are presented in the Claims Appendix, stand finally rejected. Claims 1-10, 17-22, 30, 33, 39 and 41 have been cancelled. Accordingly, the Appellant hereby appeals the final rejection of claims 11-16, 23-29, 31-32, 34-38, 40, and 42.

15

IV. Status of Amendments

Following, a first Office Action on the merits dated August 3, 2004; Appellant filed an amendment on May 21, 2004. In the amendment, claims 1-10, 17-22, 30, 33, 39, and 41 were canceled and claims 28, 32, 34, 38, and 40 were amended to more clearly define the invention. In response to this amendment, a final Office Action, dated November 29, 2004, was issued, once again rejecting all of the pending claims. In response to the final Office Action, Appellant filed a response on January 29, 2005, requesting reconsideration of the rejection of claims 11-16, 23-29, 31-32, 34-38, 40, and 42. In response to this request, an Advisory Action was issued on March 23, 2005.

25

V. Summary of Claimed Subject Matter

A system (10) is provided which is receptive to selective tuning at particular frequencies. The system (10) includes a display device (15), an audio synthesizer (14), and a controller (20). The controller (20) is in communication with the display device (15) and the audio synthesizer

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(14). The controller communicates with the audio synthesizer (14) when a malfunction is detected with respect to the display device (15). In one embodiment, the audio synthesizer (14) produces an audible announcement of a frequency at which the system (10) is currently tuned.

In another embodiment, an apparatus (10) adapted to be selectively tuned to individual frequencies communicates with an audio synthesizer (14) and a display device (15). The apparatus (10) comprises a processor (20) which: i) detects a first operating mode; ii) tunes the apparatus (10) to a predetermined frequency, if the first operating mode is detected; iii) controls the audio synthesizer (14) to generate an audio announcement of a frequency at which the apparatus (10) is currently tuned, if the first operating mode is detected; and iv) controls the display device (15) to display a frequency at which the apparatus (10) is currently tuned, if the first operating mode is not detected.

In another embodiment, a method of providing feedback of a first selected setting in a system (10) including a signal receiving device comprises the first step of visually presenting the first selected setting during a first mode. In a next step, a second selected setting is audibly presented during a second mode. The second selected setting is a default setting that is selected upon failure of a visual display (15).

In another embodiment, a method of providing information regarding a system (10) adapted to receive signals over a range of frequencies and adapted to tune to individual frequencies within the range includes a first step of tuning the system (10) to a first frequency. Next, the first frequency during a first mode of operation is visually displayed. Then, the first frequency during a second mode of operation is audibly announced. The second mode of operation is entered upon the inability to visually display the first frequency.

In another aspect of the invention, a computer executable code that is stored on a computer readable medium can provide information regarding a system (10) adapted to receive signals over a range of frequencies and adapted to tune to individual frequencies within the range. The code comprises code tune the system (10) to a first frequency; visually display the first frequency during a first mode of operation, audibly announce the first frequency during a second mode of operation; and wherein the second mode of operation entered upon failure to visually display the first frequency.

30

In another aspect of the present invention, a system (10) that is receptive to selective tuning at particular frequencies comprises a means for displaying and a means for audio synthesizing a frequency signal. The system (10) further includes a means for controlling communication with said displaying means and said audio synthesizing means. The said control
5 means communicates with said audio synthesizing means when a malfunction is detected with respect to said displaying means.

In another embodiment, a computer executable software code stored on a computer readable medium for use with an apparatus (10) adapted to be selectively tuned to individual frequencies communicates with an audio synthesizer (14) and a display device (15). The said
10 code comprising code to detect a first operating mode and tune the apparatus (10) to a predetermined frequency, if the first operating mode is detected. Additionally the said code comprises code to, if the first operating mode is detected, control the audio synthesizer (14) to generate an audio announcement of a frequency at which the apparatus (10) is currently tuned, and to control the display device (15) to display a frequency at which the apparatus (10) is
15 currently tuned, if the first operating mode is not detected.

VI. Grounds of Rejection to be Reviewed on Appeal

The grounds of rejection to be reviewed in this appeal are as follows:

20 1. Claims 11-16, 23-27, 40 and 42 stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over U.S. Patent No. 5,220,681 (Belgin).

2. Claims 28, 29, 31-32, 34-38, 11-16 and 23-27 stands rejected as unpatentable over
25 *Belgin* in view of an IEEE article entitled "Integrated Communication, Radio, Navigation, and Identification" (Sinay).

VII. ARGUMENT

A. CLAIMS 11-16, 23-29, 31-32, 34-38, 40 AND 42 ARE NOT UNPATENTABLE
UNDER 35 U.S.C. § 103 OVER *BELGIN*

30

In the final Office Action dated August 24, 2004, claims 11-16, 23-29, 31-32, 34-38, 40 and 42 were rejected under 35 U.S.C. § 103 as allegedly being unpatentable over *Belgin* and in view of, presumably, what is known in the art. As will be explained in more detail herein below, these rejections are not tenable at least because elements recited in independent claims 11, 23, 40 and 42 are not found in the cited references. Also, the rejection is based on hindsight reconstruction.

1. *Belgin*

Belgin discloses a decoding and display mechanism wherein the encoded audio output can be monitored through the pilot's headset or other speaker. In *Belgin*, encoded audio signals are received by a signal input port (11) which couples to a tunable filter/frequency discriminator unit (10) to filter the encode signal. The filtered encode signal is then received by a microprocessor-based decoder (20) which decodes the symbols of the encoded audio signal and generates a set of output signals representative of the alpha-numeric abbreviation of the source of the channel being monitored. This set of output signals is then used to drive a digital display (50) or speech synthesizer (60), so that the pilot may be provided with the identification of the source of the monitored channel. (Column 3, lines 18-63). The system generates a warning upon two occurrences: (1) a loss of signal (signal too low to detect) or (2) a loss of power. (column 3, line 63 to column 4, line 6).

2. Analysis

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. In *re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). The Examiner has the burden of setting forth a detailed evidentiary basis for the teaching, suggestion, or motivation to combine the cited references. As the Court of Appeals for the Federal Circuit recently reiterated, the factual inquiry of whether to combine references must be thorough and searching, and must be based upon objective evidence of record. In *re Sang Su Lee*, 277 F.3d 1338, 1343 (Fed. Cir. 2002). Moreover, a claim cannot be found *prima facie* obvious unless all the elements of the claim are taught or suggested in the cited art. In *re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974); In *re Wilson*, 424 F.2d 1382, 1385 (C.C.P.A. 1970) ("All words in a claim must be

considered in judging the patentability of that claim against the prior art.”). Just because a prior art reference *can* be modified does not render the proposed modification obvious unless the prior art suggests the desirability of making the proposed modification. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Appellants submit that the Examiner has not met his burden,
5 since the references do not teach or suggest all of the claim elements.

In the final Office Action the Examiner argues that *Belgin* discloses a display unit, a speech synthesizer, and a computer which controls feedback to the display unit and speech synthesizer. The Examiner admits that *Belgin* does not explicitly teach that the “controller communicates with said audio synthesizer when a malfunction is detected with respect to said
10 display device.” The Examiner argues, however, that since *Belgin* teaches monitoring for loss of signal or power it would be obvious to one of skill in the art to include monitoring for loss of a display device. The Examiner further argues that the motivation to alter *Belgin* comes from the fact that because *Belgin* teaches it is important to augment prior art avionics equipment to allow for an indication of what frequency the radio is tuned through a display unit or speech
15 synthesizer, one of skill in the art, knowing that *Belgin* also teaches the monitoring of the power supply and the discriminator unit for malfunction, would expect *Belgin* to be able to detect and react to a malfunction in the display unit.

This argument is pure hindsight reconstruction. Nothing in *Belgin* discloses, teaches, or suggests the monitoring of the display device for failure or communication with an audio
20 synthesizer in result of a failure of the display device. Only the Applicant’s application contains such limitations. Indeed, *Belgin*, at column 4, lines 1-6, clearly states that only the operation of the tunable filter/frequency discriminator unit and the power supply are monitored and at column 7, lines 39-50, *Belgin* discloses that in response to a failure of the tunable filter/frequency discriminator unit, a warning message is generated and in response to a power supply failure, a
25 warning message is generated and the system powers down to a minimal level. There is nothing in *Belgin* to lead one of skill in the art to expect a system that “communicates with said audio synthesizer when a malfunction is detected with respect to the said display device.” The Examiner argues that *Belgin* discloses that it is important to augment prior art avionics equipment to allow indication of the frequency to which the radio is tuned (column 2, lines 45-
30 49) and this provides motivation to alter *Belgin*. However, the section of *Belgin* cited by the

Examiner merely states the invention of *Belgin* can be used in different types of radios. It does not provide motivation to provide a controller that communicates with the audio synthesizer when a malfunction is detected with respect to the display device as in claim 11.

5 Additionally, assuming *arguendo* that if one of skill in the art could find motivation to provide for a failure in the display device or voice synthesizer from the *Belgin* reference, there is no teaching or suggestion that when there is a failure of the display the response is to communicate with the audio synthesizer as claimed by the Applicant. There are other ways of responding to the failure in the display device or audio synthesizer, such as providing a backup display. Thus, even if there is a suggestion to modify *Belgin* to provide for failures in the display
10 device or audio synthesizer, none of the art of record provides motivation or suggestion to modify *Belgin* in the exact same way as laid out in the Applicant's claims. In the end there is but one conclusion; the only motivation to alter the prior art to include a controller that "communicates with said audio synthesizer when a malfunction is detected with respect to the said display device" is the Applicant's patent application. Because this rejection is based on
15 hindsight reconstruction, it must be withdrawn.

The Examiner's final argument with regard to claim 11 is that since *Belgin* states that "control adjustments are readily effected by way of a straightforward modification of the control software through which microcontroller 20 supervises operation of the system" and since one of ordinary skill in this art has a high level of skill, any known adjustment are obvious.

20 This argument is flawed for several reasons. First, the argument exaggerates the importance and scope of the section of *Belgin* quoted by the Examiner. The section quoted by the Examiner states:

25 The front panel switches may be employed to externally control a number of operational parameters of the system, such as whether to display station identification or the actual code contained within the monitored signal of interest, display intensity, the intensity of the audio output of speech synthesizer 60, etc. As in the case of other operational aspects of the system, such as the frequency spectrum boundaries delineated above, neither the type nor number of parameters that are controlled by way of
30 the switch panel 40 are to be considered limited to the examples presented here. Control adjustments are readily effected by way of a straightforward modification of the control software through which microcontroller 20 supervises operation of the system. (column 4, lines 56 to column 5, line 9).

Thus, what *Belgin* is discussing is adjustment to the controls such as the front panel switch controls. *Belgin* is not disclosing that other systems, aside from the frequency discriminator and the battery, should be monitored.

5 Additionally, the Examiner states that skill level of one of ordinary skill in the art would be very high in the field of endeavor and that this high level of skill in the art is enough to provide motivation to add the limitations of the Applicant's invention to *Belgin*. However, reliance on the level of skill in the art to provide motivation is impermissible. MPEP 2143.01. Therefore, for these reasons the rejection of claim 11 should be withdrawn.

10 Independent claim 23 stands rejected by the Examiner for the same reason as claim 11. Additionally, the Examiner argues that a second operating mode is taught in column 7, lines 40-45 where the system of *Belgin* detects a loss of signal or a too weak signal and provides a loss of signal announcement.

 The arguments concerning claim 11 apply to claim 23 as well. For at least this reason
15 claim 23 is in condition for allowance. Further, *Belgin* does not teach a system that "detects a first operating mode" and that "tunes the apparatus to a predetermined frequency, if the first operating mode is detected." The Examiner argues that a second operating mode corresponds to a loss of signal or a signal that is too weak and providing an announcement of the loss of station. However, the Examiner fails to address that *Belgin* fails to disclose, teach or suggest a system
20 that is able to detect a first operating mode and to tunes the apparatus to a predetermined frequency, if the first operating mode is detected. shows a first operating mode. Even with that adjustment to the Examiner's argument, these limitations are not found in *Belgin*. Further, the Examiner has provided no other prior art that discloses such a limitation. Therefore, for at least this reason, claim 23 is in condition for allowance.

25 Considering independent claim 40, claim 40 is also rejected for the reasons outlined with respect to claim 11. Therefore, for the reasons discussed in conjunction with claim 11, claim 40 is in condition for allowance.

 Considering independent claim 42, claim 42 is also rejected for the reasons outlined with respect to claim 11. Therefore, for the reasons discussed in conjunction with claim 11, claim 42
30 is in condition for allowance.

B. CLAIMS 28, 29, 31-32, 34-38 ARE NOT UNPATENTABLE UNDER 35 U.S.C. § 103 OVER BELGIN AND SINAY.

5 The final Office Action of November 29, 2004, also rejected claims 28, 29, 31-32, 34-38, under 35 U.S.C. § 103 as being unpatentable over *Belgin* in view of Integrated Communication, Radio, Navigation, and Identification (*Sinay*). It is unclear if the Examiner also intends claims 11-16 and 23-27. The Examiner listed these claims as part of the claims that stand rejected with this art. However, the rejection never specifically describes how the rejection applies to claims 10 11-16 and 23-27. However, whether claims 11-16 and 23-27 are part of the rejected claims is unimportant since the addition of *Sinay* fails to overcome the short comings of the *Belgin* reference.

1. *Belgin*

15 *Belgin* was described above, and will therefore not be described further.

2. *Sinay*

Sinay teaches an integrated system for aircrafts that controls certain flight communication and navigational functions through a communication and radio navigation controller. *Sinay* also states that a backup control unit is coupled to the same units as communication and radio navigation controller. If there is a failure in communications between the communication and radio navigation controller and the redundant systems and the individual flight control elements the communication and radio navigation controller controls. Or if the main display screen fails, control is routed to a backup controller and a backup screen are desirable (*Sinay*, p. 425, column 20 2). From this reading of *Sinay*, it is the control functions, such as those used by the pilot, that are backed-up. Additionally, in the event of a display failure another display is used.

3. Analysis

Note, that since the *Belgin* reference fails to teach all of the limitations of the independent claims and since the obviousness argument under *Belgin* is based on hindsight reconstruction, the 30

addition of *Sinay* do not overcome the shortcomings of *Belgin*. For this reason alone, the rejection under the proposed *Belgin/Sinay* combination should be withdrawn.

Additionally, the proposed *Belgin/Sinay* combination fails to disclose, teach, or suggest disclose, “visually presenting the first selected setting during a first mode” and “audibly
5 presenting a second selected setting during a second mode, the second selected setting a default setting that is selected upon failure of a visual display” as is disclosed in claim 28.

Additionally, claim 28, recites, in part “visually presenting the first selected setting during a first mode” and “audibly presenting a second selected setting during a second mode, the second selected setting a default setting that is selected upon failure of a visual display.” The
10 *Belgin/Sinay* combination fails to disclose, teach, or suggest a default setting different from a first selected setting being audibly presented. For at least these reason, claim 28 is in condition for allowance.

Also, the proposed *Belgin/Sinay* combination fails to disclose teach or suggest “audibly announcing the first frequency during a second mode of operation; and the second mode of
15 operation entered upon the inability to visually display the first frequency”, as disclosed in independent claim 32.

Further, the proposed *Belgin/Sinay* combination fails to disclose, teach or suggest “visually display the first frequency during a first mode of operation; audibly announce the first frequency during a second mode of operation; and the second mode of operation entered upon
20 failure to visually display the first frequency”, as in independent claim 38.

Considering claims 11-16 and 23-27, it has already been discussed how *Belgin*, in view of what is presumably of common knowledge to one of skill in the art, fails to teach all of the limitations of the claims and how the combination is based on hindsight reconstruction. For independent claim 11, *Sinay* fails to disclose, teach, or suggest “communicates with said audio
25 synthesizer when a malfunction is detected with respect to said display device.”

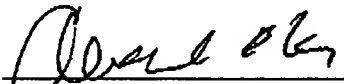
For independent claim 23, *Sinay* fails to disclose, teach, or suggest detecting “a first operating mode” that “tunes the apparatus to a predetermined frequency, if the first operating mode is detected.” For at least this reason, claims 11 and 23 are allowable.

VIII. CONCLUSION OF ARGUMENTS

In view of the foregoing, Appellant submits that the final rejection of Claims 11-16, 23-29, 31-32, 34-38, 40, and 42 are improper and should not be sustained. Therefore, a reversal of the rejections in the final Office Action dated November 29, 2004 is respectfully requested.

Respectfully submitted,

10 Dated June 20, 2005


Alexander Ching
Registration No. 41,669

15 Ingrassia, Fisher & Lorenz
Customer No. 29,906

VIII. CLAIMS APPENDIX

Claims on Appeal

5 11. A system receptive to selective tuning to particular frequencies, said system comprising:

 a display device;

 an audio synthesizer; and

 a controller in communication with said display device and said audio synthesizer,

10 wherein said controller communicates with said audio synthesizer when a malfunction is detected with respect to said display device.

 12. A system according to claim 11, wherein said controller comprises an electronic processor circuit.

15 13. A system according to claim 11, wherein said audio synthesizer audibly synthesizes a frequency at which said system is currently tuned.

 14. A system according to claim 11, wherein said system comprises a navigation
20 system.

 15. A system according to claim 11, wherein said system comprises a communications system.

25 16. A system according to claim 11, wherein said system comprises a navigation and communications system.

23. An apparatus adapted to be selectively tuned to individual frequencies, said apparatus communicating with an audio synthesizer and a display device, said apparatus comprising:

5 a processor which: i) detects a first operating mode; ii) tunes the apparatus to a predetermined frequency, if the first operating mode is detected; iii) controls the audio synthesizer to generate an audio announcement of a frequency at which the apparatus is currently tuned, if the first operating mode is detected; and iv) controls the display device to display a frequency at which the apparatus is currently tuned, if the first operating mode is not detected.

10 24. The apparatus according to claim 23, wherein said processor programs the audio synthesizer, if the first operating mode is detected.

25. The apparatus according to claim 24, wherein said processor tunes the radio to a selected frequency.

15

26. The apparatus according to claim 25, wherein after tuning the radio, said processor waits for the frequency to change.

20 27. The apparatus according to claim 23, wherein the first operating mode corresponds to a failure of the display device.

28. A method of providing feedback of a first selected setting in a system including a signal receiving device, said method comprising the steps of:

25 visually presenting the first selected setting during a first mode; and audibly presenting a second selected setting during a second mode, the second selected setting a default setting that is selected upon failure of a visual display.

29. A method according to claim 28, further comprising the step of determining the termination of the first mode.

30

31. A method according to claim 28, wherein the first selected setting comprises a frequency.

32. A method of providing information regarding a system, the system adapted to
5 receive signals over a range of frequencies and adapted to tune to individual frequencies within the range, said method comprising the steps of:

tuning the system to a first frequency;

visually displaying the first frequency during a first mode of operation;

audibly announcing the first frequency during a second mode of operation; and

10 the second mode of operation entered upon the inability to visually display the first frequency.

34. A method according to claim 32, wherein upon entering the second mode of operation, said method further comprises the steps of resetting the system to a predetermined
15 frequency, and audibly announcing the predetermined frequency.

35. A method according to claim 32, further comprising the step of audibly announcing the first frequency during the first mode of operation.

20 36. A method according to claim 32, wherein said system comprises any one of a navigation system, a communications system and a navigation/communications system.

37. A method according to claim 36, wherein said system is for use in an aircraft.

25 38. Computer executable code stored on a computer readable medium, the code to provide information regarding a system, the system adapted to receive signals over a range of frequencies and adapted to tune to individual frequencies within the range, said code comprising code to:

tune the system to a first frequency;

30 visually display the first frequency during a first mode of operation;

audibly announce the first frequency during a second mode of operation; and
the second mode of operation entered upon failure to visually display the first frequency.

40. A system receptive to selective tuning at particular frequencies, said system
5 comprising:
means for displaying;
means for audio synthesizing a frequency signal; and
means for controlling communication with said displaying means and said audio
synthesizing means, wherein said control means communicates with said audio synthesizing
10 means when a malfunction is detected with respect to said displaying means.

42. Computer executable software code stored on a computer readable medium, the
code for use with an apparatus adapted to be selectively tuned to individual frequencies, the
15 apparatus communicating with an audio synthesizer and a display device, said code comprising
code to:
detect a first operating mode;
tune the apparatus to a predetermined frequency, if the first operating mode is detected;
control the audio synthesizer to generate an audio announcement of a frequency at which
20 the apparatus is currently tuned, if the first operating mode is detected; and
control the display device to display a frequency at which the apparatus is currently
tuned, if the first operating mode is not detected.

IX. EVIDENCE APPENDIX

No evidence pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 has been entered by the Examiner or relied upon by Appellant in the instant appeal.

X. RELATED PROCEEDINGS APPENDIX

As there are no related appeals and interferences, there are also no decisions rendered by a court or the Board of Patent Appeals and Interferences that are related to the instant appeal.